

Federal Communications Commission

DA 99-2536

Before the
Federal Communications Commission
Washington, D.C. 20554

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FCC MAIL SECTION

In the Matter of)
)
Request for Review)
of the Decision of)
the Universal Service Administrator by)
)
Our Lady of Mercy School)
Hicksville, New York)
)
Federal-State Joint Board on Universal Service)
)
Changes to the Board of Directors)
of the National Exchange Carrier)
Association, Inc.)

File No. SLD 53690

CC Docket No. 96-45 ✓

CC Docket No. 97-21

ORDER

Adopted: November 16, 1999

Released: November 16, 1999

By the Common Carrier Bureau:

1. The Bureau has under consideration a Letter of Appeal filed by Our Lady of Mercy School (Our Lady of Mercy) on June 1, 1999, seeking review of a decision issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator). Our Lady of Mercy seeks review of the SLD's denial of its application for discounts under the schools and libraries universal service support mechanism.¹ For the reasons set forth below, we grant the Letter of Appeal to the extent provided herein.

2. Under the schools and libraries universal service support mechanism, eligible schools, libraries, and consortia that include eligible schools and libraries, may apply for discounts for eligible telecommunications services, Internet access, and internal connections.²

¹ Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of the Administrator may seek review from the Commission. 47 C.F.R. § 54.719(c).

² 47 C.F.R. §§ 54.502, 54.503.

3. By letter dated January 19, 1999, the SLD denied Our Lady of Mercy's request for discounts. Our Lady of Mercy appealed the SLD's decision by letter dated January 27, 1999. In its letter, Our Lady of Mercy indicated that, although the services for which funding was denied were listed as internal connections on its FCC Form 471, in fact these services are shared telecommunications and Internet access services. On May 3, 1999, the SLD affirmed its initial funding decision. The Administrator's Decision on Appeal upheld that original decision and stated that the denied funding request was categorized as internal connections for which Our Lady of Mercy was not entitled to discounts because it did not have a discount level of at least 70 percent. It further indicated that SLD policy does not allow alteration of funding requests.

4. In its request for review of the SLD's decision that is now before us, Our Lady of Mercy explains that it inadvertently mischaracterized the services and again requests that it receive discounts for services that are categorized accurately as Internet access and telecommunications services.

5. In *Williamsburg-James City*,³ the Commission considered SLD's policy of reclassifying priority one services in circumstances where they were combined in the same funding request number (FRN) with priority two services. This reclassification resulted in funding denials for services that, but for the fact that they were commingled with priority two services, would have been eligible for universal service discounts. The Commission held that, in cases where an FCC Form 471 was submitted before the establishment of the Commission's rules of priority in the *Fifth Reconsideration Order*,⁴ applicants could not have been aware of the need to segregate carefully their service requests. The Commission determined that, in appeals involving such circumstances, applications should be remanded to SLD for reprocessing, with priority one and priority two services being considered separately on their own merits.

6. We believe that the same reasoning applies in this case. Our Lady of Mercy's application was filed before the release of the *Fifth Reconsideration Order*. Consequently, it could not have known of the importance of accurately classifying services as either telecommunications and Internet access (priority one) or as internal connections (priority two). Prior to the release of the *Fifth Reconsideration Order*, applicants reasonably expected to receive discounts for *all* eligible services, no matter how they were classified. Thus, Our Lady of Mercy was not on notice that an error on its FCC Form 471 with respect to this

³ *Request for Review of the Decision of the Universal Service Administrator by Williamsburg-James City Public Schools*, CC Docket Nos. 96-45, 97-21, Order, FCC 99- 298 (rel. October 15, 1999) (*Williamsburg-James City*).

⁴ *Federal-State Joint Board on Universal Service, Fifth Order on Reconsideration and Fourth Report and Order*, 13 FCC Rcd 14915, 14938-39 (1998) (*Fifth Reconsideration Order*), paras. 36-37.

classification could result in its being denied discounts for services for which it would otherwise have been eligible. We agree with SLD that funding requests generally cannot substantively be altered after the close of the filing window. Here, however, Our Lady of Mercy did not seek to make any substantive changes to its request. According to the school, the services for which it seeks discounts are, and always have been, telecommunications services. Our Lady of Mercy merely requests that it be allowed to designate them as such.

7. But for its mistake in labelling its originally requested services as internal connections, it appears to us that Our Lady of Mercy may well have been entitled to discounts for the services listed in the three FRN's in dispute in this case. We, therefore, remand Our Lady of Mercy's application to SLD and direct SLD to issue a new funding commitment decision letter based on the applicant's corrected FRN classifications and any further consultations with the applicant that may be necessary.

8. To effectuate the decision above, we recognize that it may be necessary to waive section 54.507(b)(2) of the Commission's rules. This rule provides that schools and libraries may receive discounts on nonrecurring services only through September 30, 1999. To the extent necessary, we hereby waive this rule for a period of 180 days from the date of issuance of a Funding Commitment Letter by the Administrator pursuant to this order.

9. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 54.722 (a), that the Letter of Appeal filed by Our Lady of Mercy School on June 1, 1999 IS GRANTED to the extent provided herein.

10. IT IS FURTHER ORDERED, pursuant to sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, that section 54.507(b)(2) of the Commission's rules, 47 C.F.R. §54.507(b)(2), IS WAIVED for a period of up to 180 days following the date of issuance of a Funding Commitment Letter by the Administrator pursuant to this order.

11. IT IS FURTHER ORDERED that the Administrator IS DIRECTED to implement the decision herein.

FEDERAL COMMUNICATIONS COMMISSION



Yog. R. Varma
Deputy Chief, Common Carrier Bureau